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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 90.631)
of the Commission's Rules to)
Eliminate the Trunked System)
Five-Year Loading Requirement)

RM - 8387

To: The Commission

COMMENTS ON THE PETITION FOR RULE MAKING

NEXTEL COMMUNICATIONS, INC.

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December 16, 1993

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COMMENTS ON THE PETITION FOR RULE MAKING

I. INTRODUCTION

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.405 of the Rules and Regulations of the Federal Communications Commission (the "Commission"), respectfully files comments supporting the above-referenced Petition for Rulemaking (the "Petition") to eliminate the five-year loading requirement for trunked Specialized Mobile Radio ("SMR") systems.^{1/}

As a leading licensee of SMR systems, Nextel has extensive experience and expertise in providing mobile communications services. Nextel and its subsidiaries provide mobile communications for approximately 200,000 mobile units on a daily basis on both 800 MHz and 900 MHz SMR systems. Nextel provides mobile communications services that help Americans do their jobs more efficiently and effectively.

^{1/} Petition for Rule Making of the American Mobile Telecommunications Association, Inc. ("AMTA"), filed October 29, 1993. See Report No. 1986, released November 16, 1993.

Moreover, on February 13, 1991, the Commission authorized Nextel to construct and operate 800 MHz Enhanced Specialized Mobile Radio ("ESMR") systems in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco.^{2/} These ESMR systems incorporate innovative state-of-the-art technology to create in excess of 50 times the customer capacity of existing SMR systems while providing improved transmission quality and coverage and enhanced services. Nextel successfully initiated service on its first ESMR system in Los Angeles last August and will expand to San Francisco and other markets in early 1994.

Through its merger with Dispatch Communications, Inc. and other acquisitions, Nextel will hold authorizations to construct and operate digital wide-area ESMR systems in the top ten markets in the Nation with a combined population of over 100 million persons. Thus, Nextel has a substantial interest in the Petition, as discussed below.

II. BACKGROUND

Section 90.631(b) of the Commission's Rules requires that trunked private land mobile radio systems be loaded to a minimum of 70 mobiles per channel within five years of the initial license grant.^{3/} If the system is not loaded to 70 mobiles per channel,

^{2/} In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991), recon. den. 6 FCC Rcd 6989 (1991).

^{3/} Section 90.631(b) applies to all Part 90 trunked systems; the Petition focuses on eliminating the Rule's application to trunked SMR systems.

and all channels in that category are assigned in the system's geographic area, authorizations for channels not loaded to 100 mobiles cancel automatically and become available for reassignment. The rule applies only to trunked systems licensed before June 1, 1993.^{4/} Systems licensed after that date are not subject to the five-year loading requirement for channel recovery and reassignment purposes.^{5/}

In support of its Petition, AMTA states that the SMR industry is highly competitive, thereby incenting operators to use their assigned spectrum productively and making it unnecessary to enforce stringent loading standards to assure intensive spectrum use.^{6/} AMTA asserts that there is no rational basis for treating systems initially licensed before and after June 1, 1993 differently for channel recovery purposes. AMTA further asserts that daily fluctuations in loading make it an unreliable indicator of system capacity, that the 70 mobiles per channel requirement forces operators to favor dispatch over interconnected service to the detriment of rural systems and their customers, and that the Commission's construction and operational requirements are sufficient to deter speculation. Additionally, AMTA alleges that

^{4/} Amendment of Part 90, Subparts M and S, of the Commission's Rules, 3 FCC Rcd 1838 (1988).

^{5/} The Petition proposes eliminating only the five-year loading requirement while continuing current loading requirements for system expansion and acquisition of additional capacity by a licensee within 40 miles of an existing unloaded station. AMTA Petition at n. 1. Nextel urges the Commission to completely eliminate the 40-Mile Rule, as discussed infra.

^{6/} Petition at p. 5.

enforcing the five-year loading standard is an inefficient use of the Commission's administrative resources given the infrequency with which recovered channels can be reassigned due to intensive short spacing of SMR channels.^{7/}

III. DISCUSSION

A. The Commission Should Eliminate the Five-Year Loading Requirement for Trunked Systems

Nextel supports the Petition and urges the Commission to initiate a rule making amending Section 90.631(b) to eliminate the five-year loading requirement for trunked SMR systems. This rule is part of an SMR regulatory structure that was necessary to assure the effective and expeditious use of SMR spectrum during the formative years of the industry's development. The industry has matured, however, and the Commission recognizes that its rules contain anachronistic provisions that prevent SMR entrepreneurs from efficiently developing wide-area and other advanced mobile communications systems.^{8/} These provisions hinder the ability of SMR entrepreneurs to obtain sufficient spectrum to justify the investment required to implement digital technology in rural and other less densely populated areas. This delays the efficient, expeditious development of advanced SMR systems.

SMR entrepreneurs have compelling economic incentives to effectively and fully use SMR spectrum. As AMTA observes, the

^{7/} Id. at p. 9.

^{8/} See e.g., Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, 4 FCC Rcd 8673 (1989).

Commission has already found that the five-year loading requirement is no longer warranted for stations licensed after June 1, 1993. There is no apparent public policy basis for holding stations licensed prior to that date to a five-year loading standard for channel recovery purposes.

Moreover, in order to meet the 70 mobiles per channel loading standard, licensees are required to limit the number of interconnected mobile telephone customers they can serve due to the longer duration of interconnected communications. The loading standard hinders a licensee's flexibility to offer the mix of services desired by its customers -- particularly in rural areas with strong demand for interconnected SMR services.

B. The Commission Should Eliminate the 40-Mile Rule

As part of this rule making, Nextel also urges the Commission to eliminate the 40-Mile Rule for all 800 MHz and 900 MHz SMR systems.^{9/} This Rule prevents an SMR licensee from having more than one unloaded trunked station within 40 miles.

For the reasons discussed above, the 40-Mile Rule has outlived its usefulness. It impedes the ability of SMR operators to acquire sufficient spectrum to provide advanced services responsive to customer demand. Moreover, eliminating the 40-Mile Rule is required by the Omnibus Budget Act of 1993, which directs the

^{9/} Section 90.627(b) of the Commission's Rules. The Commission has already tentatively concluded that the 40-Mile Rule should not apply to facilities and operations authorized pursuant to an Expanded Mobile Service Provider license. See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, 8 FCC Rcd 3950 (1993) at para. 19.

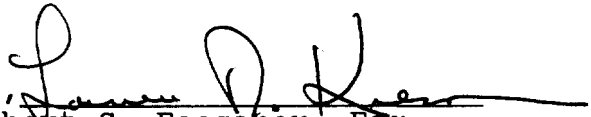
Commission to ensure that private land mobile services that will become commercial mobile services under revised Section 332 of the Communications Act are subject to comparable technical requirements as those applicable to similar common carrier services.^{10/}

IV. CONCLUSION

Nextel supports the AMTA Petition. The Commission should expeditiously initiate a rule making to eliminate the five-year loading requirement and the 40-Mile Rule for all SMR systems.

Respectfully submitted,

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^{10/} Section 6002(d)(3) of the Omnibus Budget Act of 1993.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Nextel Communications, Inc. has been mailed by United States first class mail, postage prepaid, this 16th day of December 1993, to the following:

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